



Supervisory Policy Manual

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Systems of Control for the Appointment of Managers

V.1 – 24.05.02

This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

Purpose

To specify the systems of control that an AI should have for ensuring the fitness and propriety of individuals appointed as managers¹

Classification

A statutory guideline issued by the MA under the Banking Ordinance, §16(10)

Previous guidelines superseded

This is a new guideline.

Application

To all AIs

Structure

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2. Definition of manager
 - 2.1 §2 of the Banking Ordinance
 - 2.2 The Fourteenth Schedule
 - 2.3 Application of definition
 - 2.4 Legal obligations
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 - 3.1 General
 - 3.2 Probity, reputation and character

¹ The term “manager” used in this module is as defined in §2 of the Banking Ordinance.



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- 3.3 Knowledge, experience and competence
 - 3.4 Financial soundness and independence
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 - 5.1 Regular review and examination
 - 5.2 Exercise of powers under the Banking Ordinance
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1. Introduction

- 1.1 Senior management of an AI, under the supervision of its directors and chief executive, plays a pivotal role in ensuring the financial soundness and efficient operation of the AI. The Board of Directors and the chief executive have the primary responsibility for appointing persons who are fit and proper to manage the AI's key business activities and functions.
- 1.2 The minimum authorization criterion under para. 5A of the Seventh Schedule to the Banking Ordinance provides that the MA should be satisfied that an AI has adequate systems of control to ensure that each individual who is, or is to be, a manager of the AI is fit and proper to hold the particular position he holds or is to hold.
- 1.3 Failure to adhere to the standards and requirements set out in this module may call into question whether the AI continues to satisfy the relevant authorization criterion under the Banking Ordinance. Such failure may also cast doubt on the fitness and propriety of individual directors or the chief executive of the AI.

2. Definition of manager



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2.1 §2 of the Banking Ordinance

- 2.1.1 Under §2 of the Banking Ordinance, a “manager” of a locally incorporated AI means any individual (other than a director or chief executive²) appointed by the AI, or by a person acting for or on behalf of or by arrangement with the AI, to be principally responsible, either alone or with others, for the conduct of any one or more of its affairs or business specified in the Fourteenth Schedule to the Ordinance.
- 2.1.2 For an overseas incorporated AI, a “manager” means any individual (other than the chief executive) appointed by the AI, or by a person acting for or on behalf of or by arrangement with the AI, to be principally responsible, either alone or with others, for the conduct of any one or more of its affairs or business in Hong Kong specified in the Fourteenth Schedule to the Ordinance.
- 2.1.3 The MA may declare in a notice under §2(14)(cb) that an individual, or a class of individuals, is not a manager, or a class of managers, for the purposes of the definition.

2.2 The Fourteenth Schedule

- 2.2.1 The business or affairs specified in the Fourteenth Schedule for the purposes of the definition of a manager are:
- the carrying on of retail banking, private banking, corporate banking, international banking, institutional banking, treasury or any other business which is material to the AI;
 - the maintenance of the accounts or the accounting systems of an AI;
 - the maintenance of systems of control of an AI, including those systems intended to manage the risks of the AI;
 - the maintenance of systems of control of an AI to protect it against involvement in money laundering;

² As defined in §2 of the Banking Ordinance, the term “chief executive” includes an alternate chief executive.



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- the development, operation and maintenance of computer systems for an AI;
- the conduct of internal audits or inspections of the AI's affairs or business; and
- the function of ensuring that an AI complies with laws, regulations or guidelines that are applicable to it (i.e. the compliance function).

2.2.2 The terms describing the specific types of business mentioned above are defined in the Fourteenth Schedule (see the table below). AIs may use other terms (such as “commercial banking”, “wholesale banking” or “investment banking”) to define their business activities. What matters is the nature of the underlying activity or function rather than what it is called. AIs should therefore ensure that all relevant business activities, however described or named, are identified for the purposes of determining the managers who fall within the definition.

Type of business	Details
Corporate banking	The provision of banking or other financial services ³ to companies, but excluding such services provided under retail banking
Institutional banking	The provision of banking or other financial services to AIs and banks incorporated outside Hong Kong which are not AIs or other financial institutions
International banking	The provision of banking or other financial services through overseas offices or subsidiaries of an AI
Private banking	The provision of banking or other financial services to individuals who

³ The term “banking or other financial services” includes the taking of deposits, the provision of payment and remittance services, the issue of credit, debit or multi-purpose cards, facilities for the purchase or sale of foreign currencies, securities or other financial instruments, the provision of financial advice and the incurring of financial exposure mentioned in §81(2) of the Banking Ordinance (see subsection 2.3 of [CR-G-8](#) “Large Exposures and Risk Concentrations” for details).



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Type of business	Details
	are considered by an AI to be of high net worth, but excluding such services provided under retail banking
Retail banking	The provision of banking or other financial services to individuals, firms, partnerships, unincorporated businesses and companies
Treasury	The management of the liquidity and funding of an AI and the trading of foreign currencies, securities or other financial instruments

2.2.3 AIs should also identify any other business that is material to them but is not specifically defined in the Fourteenth Schedule. Materiality to an AI can be in terms of the size of the business, the profits that it contributes, the risks that it incurs or the resources that it commands. There is no standard measure of materiality as it varies among AIs. They may, however, have regard to the following indicators when comparing the relative significance of each type of business:

- the proportion of the AI's total operating income (net of interest expense) or net profit before taxation contributed by the business;
- the value of assets accounted for by the business in relation to the AI's total assets or capital base; or
- the operating costs (including staff expenditure) attributable to the business in relation to the AI's total operating costs.

2.3 Application of definition

2.3.1 The following paragraphs provide AIs with some general guidance on how the definition of manager applies to them. It is not possible, however, to cover all relevant situations. AIs should consult the HKMA or their legal advisors if they have any doubt as to how the definition should apply in particular cases.



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2.3.2 In determining whether an individual falls within the definition of manager, AIs may consider whether that individual possesses the following characteristics:

- he is not a director or chief executive (including an alternate chief executive) of the AI⁴; and
- he is principally responsible, either alone or with others, on a day-to-day basis for the management of a discrete department, division or other business or functional unit which carries on a business or activity that falls within the categories specified in the Fourteenth Schedule to the Banking Ordinance.

2.3.3 That an individual is principally responsible for the conduct of a particular business or activity may be manifested by the following attributes that he may exhibit in relation to that particular business or activity:

- accountability for the achievement of business objectives or targets set by the Board of Directors or the chief executive;
- occupying a position within the AI which is of sufficient authority as to enable the individual to exert a significant influence on the conduct of the business or activity in question. For example, if the individual is under the immediate authority of a director or chief executive (including an alternate chief executive) or has a direct reporting line to such persons, that would be indicative of sufficient authority;
- authority to make decisions (e.g. assume business risks within pre-set limits) for that business or activity;

⁴ If an individual is principally responsible for the conduct of a particular business or activity of an AI but is also its director, chief executive or alternate chief executive, that individual does not fall within the definition of a manager. Whether any other individual within the AI should be regarded as a manager for the business or activity in question will depend on the facts of the case, i.e. whether such an individual is also principally responsible for the business or activity in question.



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- authority to allocate resources or incur expenditures in connection with the particular department, division or functional unit carrying on the business or activity; or
- authority to represent the particular department, division or function unit within the AI (e.g. in senior management meetings) or in meetings with outside parties.

2.3.4 While the above characteristics or attributes are useful indicators of whether an individual is a manager, AIs should note that not every manager will necessarily possess all these characteristics or attributes. Every case should be judged according to the facts.

2.3.5 In general, the intention is to capture the layer of management immediately below the level of chief executive, e.g. “head of retail banking”, “head of corporate banking”, “head of internal audit” etc. It is recognised, however, that managerial appointments within particular AIs may not fall neatly into these categories and that in some cases, it may be necessary to go further down into the organisation. In particular, it should be noted that:

- there may be more than one manager principally responsible for each of the affairs or business specified in the Fourteenth Schedule. For example, the overall business of “retail banking” in some AIs may be split horizontally into two or more separate, parallel units (e.g. retail branch operation and credit card operation) with separate managers appointed for each⁵; and
- the responsibilities of a manager may straddle more than one of the affairs or business specified in the Fourteenth Schedule. For example, the responsibilities of an individual appointed as manager of broad business activities such as “domestic banking” or “commercial banking” may

⁵ Where, however, the credit card operation is part of retail banking and the head of the credit card operation reports to the head of retail banking, it would not be necessary for the head of credit card operation to be appointed as a manager.



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cover both retail banking and corporate banking as defined in the Fourteenth Schedule. This is also a case where it may be necessary to go down to a further layer of management within the organisation. If, for example, underneath the “head of domestic banking” there are also heads of retail banking and of corporate banking, all three such individuals should be regarded as managers for the purposes of the Banking Ordinance⁶.

- 2.3.6 If an AI does not engage in a particular business activity specified in the Fourteenth Schedule, no manager needs to be appointed for that particular business.
- 2.3.7 A manager does not have to be an employee of the AI. For example, the manager can be an employee of the AI’s parent bank or a group company that supports a particular function (such as internal audit) of the AI.
- 2.3.8 An AI may also, in some cases, appoint an independent third party to be principally responsible for the conduct of a particular affair or business specified in the Fourteenth Schedule (e.g. the compliance, internal audit or data processing function). If the contracting party is an individual, that individual will be regarded as a manager. If the contracting party is a firm, any individual appointed by the firm (e.g. the designated partner in the case of an external auditing firm) to be principally responsible for that affair or business will be regarded as a manager for the purposes of the definition. The MA may, if there is sufficient justification to do so, exempt any such individuals (or class of individuals) from the definition of manager by way of a legal notice issued under §2(14)(cb) of the Banking Ordinance.
- 2.3.9 For an AI incorporated outside Hong Kong, a manager is appointed in relation to his responsibility for the conduct of any of the specified affairs or business in Hong Kong. For a locally incorporated AI, the appointment applies to its overall operation, whether located in or outside Hong Kong.

⁶ Assuming that such individuals are not already directors or the chief executive (including alternate chief executive) of the AI.



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2.3.10 A manager does not need to be ordinarily resident in Hong Kong, although this is expected to be the case in most instances.

2.3.11 The length of the appointment is not a factor for determining whether an individual is a manager. Als should not therefore appoint any individual as manager, even for a temporary period, if they have doubt about his fitness and propriety. The notification requirement is, however, waived if an individual is appointed bona fide on a temporary basis to perform the functions of a manager (see subsection 6.2 below for details).

2.4 Legal obligations

2.4.1 In addition to directors and the chief executive, managers of an AI may be held personally accountable for non-compliance with many of the provisions of the Banking Ordinance (see Annex A of [CG-1](#) “Corporate Governance of Locally Incorporated Authorized Institutions”).

2.4.2 It is therefore important for an AI to make sure that those of its staff that are appointed as managers are aware of and fully understand their obligations under the Banking Ordinance.

3. Fit and proper criteria

3.1 General

3.1.1 Als should have regard to a number of factors when assessing the fitness and propriety of an individual that they wish to appoint as a manager. The most important considerations of an individual’s fitness and propriety are:

- probity, reputation and character;
- knowledge, experience and competence; and
- financial soundness and independence.

These considerations are also relevant for assessing the continuing fitness and propriety of a manager.



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- 3.1.2 Als should be satisfied that individuals appointed as managers meet the fit and proper criteria on and after appointment. The relevant factors that Als should take into account are detailed in subsections 3.2 to 3.4 below.
- 3.1.3 If an AI becomes aware of any information that may call into question the fitness and propriety of a prospective or existing manager, it should conduct a thorough assessment or investigation of such information to determine whether the individual is fit and proper. The assessment, including the results of any investigation, should be properly documented. Any doubt about the individual's fitness and propriety should be cleared before he is appointed as a manager or allowed to carry on his existing duties as a manager.
- 3.1.4 In considering an individual's fitness and propriety, the weight that Als should attach to adverse events of the types listed in subsections 3.2 to 3.4 below will depend on a number of factors. These include the nature, circumstances and seriousness of and the extent of the individual's involvement in the event in question.

3.2 Probity, reputation and character

3.2.1 Factors that Als should consider include the following:

- whether the individual has been convicted of any criminal offence or is the subject of unresolved criminal charges which are of direct relevance to fitness and propriety. Particular weight should be given to offences involving dishonesty, fraud, incompetence, malpractice or contravention of any provision of banking, insurance, securities and other legislation designed to protect members of the public against financial loss;
- whether the individual has a record of non-compliance with various non-statutory codes or has been reprimanded, censured, disciplined or publicly criticised by professional or regulatory bodies;
- whether the individual has been concerned with the management of an institution which has been reprimanded, censured, disciplined, or publicly



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criticised or whose authorization has been revoked by any regulatory authority;

- whether the individual has been concerned with the management (i.e. as controller, director, chief executive or manager) of an institution which was found guilty of fraud or has been the subject of an investigation by the government, regulatory authorities and professional bodies;
- whether the individual has been disqualified by a court of competent jurisdiction from being a director;
- whether the individual has been a controller, director, chief executive or manager of an institution which has been wound up or adjudicated bankrupt by a court;
- whether the individual has been a controller, director or concerned in the management of any AI which has been wound up by a court or whose licence or registration has been suspended or revoked; and
- whether the individual has been dismissed or requested to resign from any office or employment, subject to disciplinary proceedings by his employer or barred from entry to any profession or occupation.

3.3 Knowledge, experience and competence

3.3.1 Factors that AIs should consider include the following:

- whether the individual has sufficient skill and knowledge to carry out the duties in question or has had experience of similar responsibilities previously;
- whether the individual has appropriate qualifications and training;
- whether the individual, particularly in the case of internal promotion, has demonstrated soundness of judgement (i.e. balance, rationality and maturity) in his conduct and decision-taking. For



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a new appointee, Als may take into account the individual's past achievements and reputation in the field and references from his previous employers;

- whether the individual has been reprimanded, censured, disciplined or publicly criticised by professional or regulatory bodies for negligence, incompetence and mismanagement; and
- whether the individual has been dismissed or requested to resign from any office or employment for negligence, incompetence or mismanagement.

3.4 Financial soundness and independence

3.4.1 Factors that Als should consider include the following:

- whether the individual has failed to satisfy any judgment debt under a court order or made any compromise or arrangement with his creditors;
- whether the individual has been adjudged bankrupt by court or served with a bankruptcy petition. In the latter case, Als should assess the background, nature and details of the petition to determine whether it is a bona fide dispute regarding the payment of a debt rather than lack of financial soundness; and
- whether the individual is free from any business or other relationship which could materially interfere with the exercise of his judgement when acting in the capacity of a manager (i.e. business decisions not made at arm's length or in the Al's best interest).

4. Systems of control

4.1 Major principles

4.1.1 Als should identify all managerial positions which fall within the definition of "manager" laid down in §2 of the Banking Ordinance and should have procedures for notifying these to the HKMA (see section 6 below for



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details). In cases of doubt, Als may wish to discuss the status of a particular position with the HKMA.

- 4.1.2 The responsibilities of managers should be clearly defined and supported by up-to-date job descriptions, organisation charts and levels of authority.
- 4.1.3 The qualities required for individual managerial positions in terms of skills, knowledge, experience, training etc. should be clearly defined.
- 4.1.4 The responsibilities and procedures for selecting and appointing managers should be clearly defined, including the level at which appointments should be approved and the use and composition of selection panels or promotion boards where appropriate.
- 4.1.5 Als should have clearly defined policies and procedures (see subsection 4.2 below) for satisfying themselves about the fitness and propriety of candidates for managerial positions at the time of appointment or recruitment, taking into account the criteria set out in section 3 above.
- 4.1.6 Als should maintain a list of approved recruitment agencies and should regularly review the performance of such agencies.
- 4.1.7 Als should have clearly defined systems for appraising the performance of managers, including re-assessment where appropriate of the criteria set out in section 3 above. Such systems should not give undue weight to financial performance (e.g. achievement of profitability or market share) but should also take into account other factors such as compliance with internal guidelines (e.g. on control of risk) and regulatory requirements.
- 4.1.8 Als should have clearly defined policies and procedures for investigating apparent breaches of internal guidelines or regulatory requirements by managers or complaints about the conduct of managers and for taking disciplinary action where this is appropriate.
- 4.1.9 Als should have clearly defined systems for taking action in respect of, and if necessary replacing, managers whose performance is assessed as unsatisfactory.



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- 4.1.10 Managerial vacancies should be filled promptly and there should be clearly defined arrangements to provide temporary cover in the case of temporary vacancies.
- 4.1.11 AIs should ensure that managers have adequate training for the particular positions that they hold or are to hold.
- 4.1.12 AIs should ensure that their systems of control in relation to the appointment of managers are subject to periodic review by the internal audit function.

4.2 Major assessment procedures

4.2.1 Assessment procedures may include the following:

- obtaining a declaration from the candidate regarding such matters as the existence of any criminal record, public reprimand by any regulatory body or disqualification by any professional body, financial status, personal bankruptcy and judgment debts;
- inspection of the original certificates of the candidate's educational or professional qualifications and verification of membership of professional bodies or associations;
- checking public records for evidence of public reprimands, disciplinary actions, personal bankruptcy and judgment debts;
- obtaining details of the candidate's past and present business interests, if any, including particularly those which may give rise to conflicts of interest with the managerial position in question;
- obtaining and verifying references from previous employers and from referees nominated by the candidate; and
- reviewing the record and past performance of a candidate who is an existing employee.

4.2.2 If an AI intends to assign an existing manager to a new job or change his responsibilities, it would not normally be necessary for the AI to conduct the above assessment procedures as if this were a new



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appointment. Nevertheless the AI should be satisfied that the manager has sufficient knowledge, experience and competence to take up the new responsibilities (see subsection 3.3 above).

- 4.2.3 Where a key function or activity of an AI is supported by individuals designated by the AI's parent bank or group company or an external firm, it may not be possible to conduct the above assessment procedures at the time of appointment. In such cases, the AI should be satisfied that it can count on the above parties to ensure the fitness and propriety of the individuals designated to be principally responsible for managing the function or activity in question. This does not, however, relieve the AI from the responsibility to monitor the performance of such individuals on a continuing basis.
- 4.2.4 It is not necessary for AIs to conduct the above assessment procedures in respect of those individuals who have already assumed the responsibilities of managers prior to the commencement of Banking (Amendment) Bill 2001, although they may wish to do so for their own purposes.
- 4.2.5 AIs are not required to employ the full extent of the above assessment procedures in respect of temporary acting appointments (i.e. appointments that provide temporary cover for existing managers who are away from office). They should, however, take appropriate steps to satisfy themselves regarding the suitability of the individuals concerned before they are allowed to act as managers on a temporary basis.

5. Role of the HKMA

5.1 Regular review and examination

- 5.1.1 The role of the HKMA is to verify that AIs have adequate systems of control for the appointment of managers.
- 5.1.2 The HKMA will request AIs to submit relevant policies and procedures for its review and, if necessary, check the adequacy of the systems in place during on-site examinations.



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5.2 Exercise of powers under the Banking Ordinance

5.2.1 Where there are significant weaknesses in an AI's systems of control for the appointment of managers, the HKMA's normal reaction will be to request the AI to take appropriate remedial action. Where this is not done or is ineffective, it may call into question whether the AI continues to satisfy the relevant authorization criterion (i.e. para. 5A) under the Seventh Schedule to the Banking Ordinance. At the same time, it may cast doubt on the fitness and propriety of individual directors or the chief executive of the AI. Based on the circumstances of the case, the HKMA will consider whether formal supervisory action should be taken against the AI⁷ or the individuals concerned.

5.2.2 The MA may also exercise his powers under §52(1)(c) of the Banking Ordinance, after consultation with the Financial Secretary, if the conditions for exercising such powers are met (e.g. the AI is carrying on its business in a manner detrimental to the interests of its depositors). Where the AI's problems are directly attributable to the conduct or acts of certain managers, the MA may direct the AI to remove such managers from their present positions or to take such other actions as are necessary in the circumstances to protect the interests of its depositors.

6. Notification requirements

6.1 General

6.1.1 Als' obligations to notify the MA of the appointment of managers and subsequent changes associated with such appointments are set out in §72B of the Banking Ordinance.

6.1.2 Als should review their existing management structure and identify all managerial positions which are occupied by individuals falling within the definition of manager

⁷ The MA's power to revoke the authorization of an AI is exercisable if it fails to comply with any authorization criterion under the Seventh Schedule. Whether this power should be exercised will depend on the circumstances of each case.



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under §2. They are expected to agree with the MA a list of such positions before §72B takes effect.

- 6.1.3 Based on the list agreed under para. 6.1.2 above, Als should submit to the MA within 14 days after §72B comes into effect a list of those individuals who fall within the definition of manager on the effective date. Als should also notify the MA of any subsequent changes to the list within 14 days of the change (see subsection 6.2 below for the treatment of temporary appointments). Such changes will include new appointments, cessation of existing appointments and changes in the responsibilities of existing managers (e.g. due to internal transfers, promotion or restructuring).
- 6.1.4 Als should submit to the MA a letter signed by the chief executive containing the following information in respect of the appointment of managers:
- the name of the manager;
 - the identity card or passport number of the manager;
 - the position or title of the manager⁸; and
 - the date of new appointment, cessation of existing appointment or change in existing responsibility.
- 6.1.5 Als should inform the MA, as soon as practicable, of cases where managers are removed from their positions because of fraud, dishonesty or malpractice.
- 6.1.6 Where necessary, the MA may require further information from the AI in respect of particular appointments. This may include the personal details of a manager (e.g. experience and qualifications) and the evidence of checks conducted on the manager for the purposes of verifying that the systems for appointing managers are working effectively.
- 6.1.7 §72B further requires Als to give a written notice to the person who became or ceased to be a manager or

⁸ In the case of new appointment or change in existing responsibility, a description of the affairs or business specified under the Fourteenth Schedule for which the manager is principally responsible should also be provided.



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whose responsibility as a manager was changed (e.g. due to internal transfers, promotion or restructuring). The notice should generally contain the following information:

- the name of the manager;
- the position or title of the manager; and
- the date of new appointment, cessation of existing appointment or change in existing responsibility.

6.1.8 In the case of new appointments, AIs should also ensure that the appointees are fully aware of their legal obligations of being a manager under the Banking Ordinance.

6.2 Temporary appointments

6.2.1 §72B of the Banking Ordinance does not apply to the appointment of an individual bona fide on a temporary basis to perform the functions of a manager.

6.2.2 This exemption is intended to be applicable only to:

- temporary acting appointments of no more than a few months (e.g. to provide cover for managers who are precluded by illness or absence from carrying out their functions, or to fill a position temporarily pending a permanent appointee); and
- appointments of independent third parties of a short-term nature.

6.2.3 The exemption is applicable only if the AI has no intention of allowing the individual concerned to perform the functions of a manager on a permanent or continuing basis when the appointment is made.

6.2.4 If a temporary appointment becomes a permanent appointment due to a change in circumstances, the AI should notify the MA of the change within 14 days.

6.2.5 AIs should maintain sufficient records of temporary appointments for review by the HKMA upon request.

6.2.6 The HKMA will monitor AIs' compliance with §72B to ensure that they have not abused the exemption for temporary appointments (e.g. by extending a series of



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temporary appointments to an individual in order to evade the notification requirement).

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